Supreme Court, U.S.
FILED
MAR 31 1994
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No. 93-1432

In The

Supreme Court of the United States

October Term, 1993

SAMUEL D. ADAMO and TANA ADAMO,

Petitioners,

v.

STATE FARM LLOYDS COMPANY,

Respondent.

On Petition For Writ Of Certiorari
To The Texas Fourteenth Court Of Appeals
Houston, Texas

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether due process, as guaranteed through the Fifth and Fourteenth Amendments of the United States Constitution, requires an oral hearing before the trial court on a summary judgment motion when properly and timely requested by the party against whom summary judgment is subsequently rendered.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent State Farm Lloyds Company ("State Farm") respectfully files this Brief in Opposition to the Petition for Writ of Certiorari filed by Samuel D. Adamo and Tana Adamo because the Texas Fourteenth Court of Appeals, Houston, Texas, correctly followed Texas law in affirming the trial court's decision to deny the Adamos an oral hearing on their Motion for Summary Judgment.

JURISDICTION

Respondent respectfully disagrees with Petitioners' statement of jurisdiction under 28 U.S.C. §1257(a). The

decision on which the Petitioners seek review is not a final judgment or decree from the Texas Supreme Court as required by §1257, but rather a judgment of a Texas Court of Appeals, merely an interim appellate court. The Texas Supreme Court refused to hear the case in question; therefore, §1257 may not be used to invoke the Supreme Court's jurisdiction. Petitioners seek review of a decision from an appeals court, not the highest court of Texas, the Texas Supreme Court. Further, there are no claims of unconstitutionality of any state laws cited by the Petitioners. The Petitioners are merely complaining about local procedural rules of court. Such rules do not involve any Constitutional questions.

STATEMENT OF THE CASE

This case is moot. The original declaratory judgment lawsuit styled "State Farm Lloyds Company vs. Samuel D. Adamo and Tana Adamo" was filed by State Farm to obtain a judicial ruling regarding whether State Farm had a duty to defend the Adamos in a case filed by Joseph Marino against Samuel and Tana Adamo and others in the 11th Judicial District Court of Harris County, Texas. On December 17, 1991, the district court dismissed Marino's suit against the Adamos and the other defendants with prejudice to refiling same.

Marino's subsequent motion for new trial was denied by the court. Marino appealed. On November 25, 1992, the Tenth Court of Appeals affirmed the district court's dismissal of the litigation as to all the defendants. On December 30, 1992, the Tenth Court of Appeals denied

Marino's motion for rehearing. Marino applied for a writ of error to the Texas Supreme Court. By June, 1993, the Texas Supreme Court had denied Marino's writ of error: the Supreme Court's denial of the writ of error ended the underlying case. With no underlying case pending, there is nothing for any court to decide in a declaratory judgment action because there is no longer any "justiciable issue."

REASONS FOR DENYING THE WRIT

I.

DUE PROCESS DOES NOT INCLUDE THE RIGHT TO ORAL ARGUMENT ON A MOTION.

The Petitioners incorrectly assume that due process requires an oral hearing on a motion for summary judgment, and then attempt to "boot strap" a discretionary, local court rule into a federal question. Due process does not include the right to oral argument on a motion. *Spark v. Catholic University of America*, 510 F.2d 1277, 1280 (D.C. Cir. 1975) (per curium); see also, *Morrow v. Topping*, 437 F.2d 1155 (9th Cir. 1971). Under Texas law, the decision whether to grant an oral hearing on a motion is purely within the discretion of the trial judge. Oral argument is not always necessary or desirable in summary judgment proceedings because no new evidence may be received, and oral testimony may not be considered. *Richards v. Allen*, 402 S.W.2d 158, 160 (Tex. 1966). Further, the Fifth Circuit Court of Appeals has held that the "hearing" referred to in Fed. Rule Civ. Pro. 56 does *not* necessarily mean an oral hearing. *Kibort v. Hampton*, 538 F.2d 90, 91

(5th Cir. 1976). What Rule 56 contemplates is providing the adverse party with an opportunity to prepare and submit a response, affidavits, memoranda, and other materials for the court to consider when ruling on the summary judgment motion. *Id.*, at 91. The Harris County District Court Local Rule 3.3, giving the trial court the sole discretion whether to grant an oral hearing, does not run contrary to several federal courts' local rules or the U.S. Constitution. The Petitioners' writ should be denied.

CONCLUSION

In this declaratory judgment action, the underlying case has been dismissed; therefore, there is no justiciable controversy before the court relative to this case. The Harris County Local Rule does not violate due process, and due process does not include the right to oral argument on a motion. Respondent respectfully requests that this court deny the Petitioners' writ of certiorari to review the judgment and opinion of the Texas Fourteenth Court of Appeals, Houston, Texas.

Respectfully submitted,

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